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MARSHALL, GERSTEIN & BORUN LLP
6300 SEARS TOWER
233 S. WACKER DRIVE
CHICAGO, IL 60606

EXAMINER

LE, HUYEN D

ART UNIT PAPER NUMBER

2643

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/748,800

Applicant(s)

RAVIV, GABRIEL

Examiner

HUYEN D. LE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-37 and 39-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-37 and 39-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claim 40 recites the limitation "the chamber" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 41 recites the limitation "the means for delivering sound" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 24-29, 31-37, 40 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Lenz (U.S. patent 5,144,678).

Regarding claims 24-25, 28-29 and 42, as broadly claimed, Lenz teaches a method and apparatus of an earpiece that comprises a cover (24, 44, 114) defining a cavity (figures 3, 5), an attaching surface (30, 40, 42, 46, 110, 112, 116, 118) coupled to the cover member, and an electrode (92) coupled to the surface. As shown in figure 1, the earpiece of Lenz is for auditory testing (see the earpiece is worn by the wearer or the operator).

Regarding claims 26-27, Lenz shows the baffle is constructed of the flexible foam (46, 112, 30, 40, 110, 116) as claimed.

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Regarding claims 31-32, Lenz teaches the cover or the baffle which is adapted to be coupled to a sound source as claimed (figure 3, col. 2, lines 37-40).

Regarding claims 33-34, Lenz shows the electrode (92) as claimed (figures 5-6 and col. 4, lines 27-30).

Regarding claim 35, as broadly claimed, Lenz teach the electrode (92) which is a conductive adhesive coating as claimed (col. 4, lines 27-30)

Regarding claim 37, Lenz shows the electrode (92) as claimed (figures 5, 6).

Regarding claim 40, as broadly claimed, Lenz teaches means (34) for delivering sound into the chamber.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 24-37, 40 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lenz (U.S. patent 5,144,678).

Regarding claims 24-25, 28-29 and 42, as interpreted in a different manner, Lenz teaches an earpiece that comprises a cover (24, 44, 114) defining a cavity (figures 3, 5), an attaching surface (30, 40, 42, 46, 110, 112, 116, 118) coupled to the cover member, and an electrode (92) coupled to the surface.

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Lenz does not specifically disclose that the earpiece is for auditory testing. However, it is very well known in the art for using the headset or the earpiece in the auditory testing.

Since Lenz does not restrict the application of the headset, it therefore would have been obvious to one skilled in the art to provide the earpiece of Lenz for using in any environment such as for auditory testing for greater application.

Regarding claims 26-27, Lenz shows the baffle is constructed of the flexible foam (46, 112, 30, 40, 110, 116) as claimed.

Regarding claim 30, Lenz does not specifically teach that at least a portion of the cover is substantially transparent.

However, Lenz does not restrict to any specific material for the cover; it therefore would have been obvious to one skilled in the art to provide any rigid plastic material for the cover (24) of Lenz such as a substantially transparent material for a designed choice.

Regarding claims 31-32, Lenz teaches the cover or the baffle which is adapted to be coupled to a sound source as claimed (figure 3, col. 2, lines 37-40).

Regarding claim 33, Lenz shows the electrode (92) as claimed (figures 5-6 and col. 4, lines 27-30).

Regarding claim 34, as interpreted in a different manner, Lenz does not specifically disclose that the electrode is coupled to a tab portion that extends past the surface. However, Lenz does show that the electrode (92) is held by adhesive to the outside of the outer layer (42, 118) of the ring shape member of the cushion (30, 110), and to directly contact the skin of the wearer.

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Therefore, it would have been obvious to one skilled in the art to attach the electrode (92) of Lenz to any portion of the ring shape member (30, 40, 42, 110, 118) such as a tab portion depending the size or the shape of the cushion for the desired purpose of better providing the electrode surface to the skin of the wearer (also see col. 1, lines 56-63).

Regarding claims 35-36, Lenz teach the electrode (92) which is a conductive adhesive coating (col. 4, lines 27-30). Lenz does not specifically teach the coating (92) which is an electrically conductive gel as claimed. However, providing an electrically conductive gel for the electrically conductive layer is known in the art.

Therefore, it would have been obvious to one skilled in the art to provide any form of the electrically conductive layer for the sensor (92) of Lenz for flexibility and a better form for the electrically conductive layer.

Regarding claim 37, Lenz shows the electrode (92) as claimed (figures 5, 6).

Regarding claim 40, as broadly claimed, Lenz teaches means (34) for delivering sound into the chamber.

6. Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lenz (U.S. patent 5,144,678) in view of Ziarati (U.S. patent 5,627,902) or Beguin (U.S. patent 3,160,717).

Regarding claim 41, Lenz does not specifically teach that means for delivering sound is a tube that is connected to the chamber.

Ziarati or Beguin shows the cover of an earpiece having a tube for delivering sound (figures 2A, 2B in Ziarati and figure 7 in Beguin).

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Since Lenz does provide means (34) for delivering sound in the earpiece, and providing a tube for delivering sound to the chamber of the earpiece is known in the art; it therefore would have been obvious to one skilled in the art to provide the means for delivering sound in to the chamber (24, 114) of the Lenz headset for better sealing the ear of the wearer.

7. Claims 24, 37 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ziarati (U.S. patent 5,627,902) or Beguin (U.S. patent 3,160,717) in view of Lenz (U.S. patent 5,144,678).

Regarding claims 24, 37 and 41, Ziarati or Beguin teaches an earpiece that comprises a cover member defining a cavity, an attaching surface (24, 26 in Ziarati, and 12, 14, 16, 20, 22, 24, 36, 74 in Beguin) and means for delivering sound as claimed (figures 2A, 2B in Ziarati and figure 7 in Beguin).

Ziarati or Beguin does not specifically teach an electrode coupled to the surface as claimed.

Lenz teaches an electrode (92) which is coupled to the outside surface of the cushion (110, 118).

Since coupling the electrode to the outside surface of a cushion in the earpiece is known in the art; it therefore would have been obvious to one skilled in the art to provide the electrode, as taught by Lenz, to the outside surface of the cushion of Ziarati or Beguin for automatically switching the device between the on and off states.

8. Claims 39, 40 and 41 (as best understood with regarding 112, 2nd) are rejected under 35 U.S.C. 103(a) as being unpatentable over Ziarati (U.S. patent 5,627,902).

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Regarding claims 39, 40 and 41, as best understood with regarding 112, 2nd, Ziarati teaches an earpiece that comprises means for forming an acoustic boundary capable of encircling an ear (figures 2A, 2B), means (25) for providing a conductive channel and means (24) for covering the forming means as claimed.

Ziarati does not specifically disclose that the earpiece is for auditory testing. However, it is very well known in the art for using the headset or the earpiece in the auditory testing.

Therefore, it would have been obvious to one skilled in the art to apply the earpiece of Ziarti in any application such as for auditory testing for greater application and greater flexibility.

9. Claims 39, 40 and 41 (as best understood with regarding 112, 2nd) are rejected under 35 U.S.C. 103(a) as being unpatentable Beguin (U.S. patent 3,160,717).

Regarding claims 39, 40 and 41, as best understood with regarding 112, 2nd problem as mentioned above, Beguin teaches an earpiece that comprises means for forming an acoustic boundary capable of encircling an ear (figures 3, 6, 7), means (36, 74) for providing a conductive channel and means (12) for covering the forming means as claimed.

Beguin does not specifically disclose that the earpiece is for auditory testing. However, it is very well known in the art for using the headset or the earpiece in the auditory testing.

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Therefore, it would have been obvious to one skilled in the art to apply the earpiece of Beguin in any application such as for auditory testing for greater application and greater flexibility.

Response to Arguments

10. Applicant's arguments with respect to claims 24-37 and 39-42 have been considered but are moot in view of the new ground(s) of rejection.

The Applicant should note that there is no claim 38 in the case since the Applicant has misnumbered claims 39-42.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (703)305-4844. The examiner can normally be reached on 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CURTIS KUNTZ can be reached on (703) 305-4708. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



HL
June 11, 2004



HUYEN LE
PRIMARY EXAMINER